

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DENNIS MICHAEL SALERNO,

Defendant-Appellant.

UNPUBLISHED
February 24, 2004

No. 244699
Ingham Circuit Court
LC No. 02-000217-FC

Before: Hoekstra, P.J., and Fitzgerald and Talbot, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of first-degree premeditated murder, MCL 750.316, and was sentenced to a mandatory term of life imprisonment without possibility of parole. Defendant appeals as of right. We affirm.

This case involves the murder of defendant's estranged wife, an East Lansing resident whose partially clad body was discovered in a landfill near the campus of Bowling Green State University in Ohio. Defendant contends that the prosecutor failed to present sufficient evidence to prove that the murder occurred in Ingham County.

Venue, although not an element of a crime, is nonetheless a part of every criminal case, and must be proved by the prosecution beyond a reasonable doubt. *People v Fisher*, 220 Mich App 133, 145; 559 NW2d 318 (1996). Due process requires that a criminal prosecution take place before a trier of fact of the city or county where the offense occurred, except as otherwise provided by the Legislature. *People v Lee*, 334 Mich 217, 225-226; 54 NW2d 305 (1952).

This Court reviews de novo whether the trial court had proper venue in a criminal case de novo. *Fisher*, *supra* at 145. Venue is a factual issue and the trier of fact was permitted to make rational inferences and consider circumstantial evidence in finding that the crime was perpetrated in Ingham County. See *People v Belanger*, 120 Mich App 752, 757; 327 NW2d 554 (1982).

Viewing the evidence in the light most favorable to the prosecution, a rational fact finder could have found beyond a reasonable doubt that the victim was killed in Ingham County. Thomas Huff testified that he met defendant while in jail in Ohio in February 2001. Defendant told Huff he was in jail for murdering his boyfriend, and eventually told Huff that he had murdered his wife in Lansing because she found out that he had an affair with a man and was going to "tell everybody about it." Additionally, the testimony established that the victim feared

defendant, had the locks on her apartment changed, and was in the process of seeking a personal protection order against him. The victim was last seen at her apartment in East Lansing at 6:00 a.m. on June 30, 2000, after finishing a newspaper delivery route. The victim was scheduled to begin her internship work at Community Mental Health at 9:00 a.m. on June 30, but did not show up for work, did not call in to report that she would be absent, and was not seen alive by anyone after 6:00 a.m. on June 30, 2000. The following morning, the victim's Plymouth Reliant was seen parked in a Toledo, Ohio, parking lot at 7:30 a.m. Defendant's fingerprint was found on the inside of the driver's door window. The timing of the victim's disappearance, as well as evidence that the victim was minimally clothed when her body was discovered and that she would not have voluntarily left her apartment with defendant, provides sufficient circumstantial evidence that the victim was killed inside her apartment on June 30. *Fisher, supra*, at 145-146; MCL 767.45(1)(c).

Defendant also argues that the trial court erred by denying defendant's motion to suppress a letter written by the victim that was seized by police officers during a lawful search of a box found in a storage unit because the letter did not constitute evidence or contraband. The trial court found that the letter fell under the plain-view exception to the warrant requirement:

It has been stipulated that the officers were lawfully in the storage – that the officers were lawfully present, pursuant to a warrant, in the storage locker. They were authorized pursuant to that warrant to search for papers and writings of the defendant. In so doing, they uncovered what has been marked as Exhibit 1 to the prosecutor's brief.

It is a one-page typed written statement. It is dated the day before the victim of this crime disappeared. It is a request for a personal protection order. It is signed by the victim. The first line of that statement states that the victim seeks protection from the defendant.

Whether one views the investigation at that time as a missing person's investigation or a murder investigation, it is and would be, to any reasonable investigator, immediately apparent that such a document would have relevancy to the investigation. This is not a case where the police have further invaded the privacy of the defendant. They did not go into an area not authorized. They did not inspect types of documents that were not authorized.

Their conduct, under the totality of the circumstances, was reasonable, and the statement was lawfully seized under the plain view doctrine. Motion is denied.

Findings of fact regarding a motion to suppress evidence are reviewed for clear error, and the trial court's ultimate decision on a motion to suppress is reviewed de novo. *People v Attebury*, 463 Mich 662, 668; 624 NW2d 912 (2001); *People v Fosnaugh*, 248 Mich App 444, 450; 639 NW2d 587 (2001).

The plain-view exception to the warrant requirement allows seizure of objects falling within the plain view of an officer who has a right to be in the position to have that view. *Harris v United States*, 390 US 234, 236; 88 S Ct 992, 993; 19 L Ed 2d 1067 (1968); *People v Tisi*, 384

Mich 214, 218; 180 NW2d 801 (1970); *People v Wilson*, 257 Mich App 337, 361; 668 NW2d 371 (2003). Two conditions must be satisfied. First, there must be prior justification for the officer's intrusion into an otherwise protected area. *Coolidge v New Hampshire*, 403 US 443, 466; 91 S Ct 2022, 2038; 29 L Ed 2d 564 (1971). This condition is not in dispute. Second, the evidence must be obviously incriminatory or contraband. *Wilson, supra*. We find no clear error in the trial court's factual findings regarding this condition. Upon de novo review, we conclude that the letter was properly seized under the plain view exception to the warrant requirement.¹

Affirmed.

/s/ Joel P. Hoekstra
/s/ E. Thomas Fitzgerald
/s/ Michael J. Talbot

¹ Further, testimony was presented that the victim was seeking a personal protection order against defendant and, therefore, the letter was duplicative evidence.